

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:12-HC-2092-BO

FILED IN OPEN COURT
ON 10/25/2012 *UR*
Julie A. Richards, Clerk
US District Court
Eastern District of NC

UNITED STATES OF AMERICA)
Petitioner,)
v.) SETTLEMENT AGREEMENT
JAMES PIERRO,)
Respondent.)

WHEREAS, the United States of America, Petitioner, certified James Pierro, Respondent, as a sexually dangerous person on April 10, 2012;

WHEREAS, an initial certification of a sexually dangerous person was based upon a Bureau of Prisons' forensic evaluation determining that Respondent met all three criteria for civil commitment as a sexually dangerous person under 18 U.S.C. § 4248 in that: (1) Respondent previously engaged or attempted to engage in sexually violent conduct or child molestation, as evidenced by his prior convictions for: Endangering the Welfare of a Child, Sexual Assault, and Attempted Sexual Assault, in the Superior Court, Bergen County, New Jersey (No. 86-01-1661), for photographing a 12-year-old boy masturbating and engaging in sexual acts with a 13-year-old boy, and for performing oral sex and attempting to perform anal intercourse on a 13-year-old boy; and Attempted Abuse/Neglect of a Child, in the Superior Court, Bergen County, New Jersey (No. 00-04-0669), for distributing

flyers soliciting 14- to 16-year-old boys to work for him as amateur models; (2) A psychological review and assessment indicated an Axis I diagnoses of Pedophilia, Sexually Attracted to Males, Nonexclusive Type, and Paraphilia Not Otherwise Specified; and an Axis II diagnosis of Personality Disorder Not Otherwise Specified, with Borderline and Antisocial Features; and (3) A risk assessment utilizing the Static-99R actuarial tool and other psychologically meaningful and dynamic risk factors indicated that Respondent would have serious difficulty refraining from sexually violent conduct or child molestation if released;

WHEREAS, a Court-appointed forensic psychologist evaluated Respondent and agreed that Respondent previously engaged or attempted to engage in the above-referenced acts and met the diagnostic criteria for the mental disorders set forth above, but opined that there was insufficient evidence to conclude that Respondent would have serious difficulty refraining from sexually violent conduct or child molestation if released;

WHEREAS, Respondent consented to a clinical interview by a Bureau of Prisons' staff psychologist who was able to perform additional psychological testing and subsequently revised her initial opinion by finding that Respondent would not meet the third criterion for civil commitment;

WHEREAS, based upon the foregoing concurrence of two qualified forensic evaluators that Respondent does not meet the

statutory criteria for civil commitment, the parties have agreed to settle and conclude this matter;

IT IS THEREFORE AGREED between the parties, the United States of America, by and through the United States Attorney for the Eastern District of North Carolina, and James Pierro, by and through his counsel of record, Joseph Craven, that this matter should be concluded in accordance with the terms and conditions of this agreement as follows:

1. This agreement constitutes the full and complete record of the agreement of this matter. There are no other terms of this agreement in addition to or different from the terms contained herein.

2. Respondent admits and stipulates that the United States lawfully certified him as a sexually dangerous person under the Adam Walsh Act, as codified in 18 U.S.C. § 4248 pursuant to procedures established in 18 U.S.C. § 4248(a) and that said statute was upheld as constitutional in United States v. Comstock, 130 S. Ct. 1949 (2010), and again on remand to the Fourth Circuit Court of Appeals, in United States v. Comstock, 627 F.3d 513 (4th Cir. 2010).

3. Respondent admits and stipulates that the criminal judgment against him in the matter of United States of America v. James Pierro, in the United States District Court for the District of New Jersey, Docket No. CR 04-714-01, entered on March 16, 2005,

imposed upon him a 3-year term of supervised release to begin upon his release from imprisonment. A copy of the criminal judgment is attached to the United States' motion to dismiss as Exhibit B.

4. Respondent agrees and promises that, in consideration of the Government's agreement to voluntarily dismiss this action with prejudice, he will not collaterally attack the order of supervised release contained in the criminal judgment against him or petition for early termination of his supervised release. Respondent further agrees and consents to the release of all forensic psychological evaluations and other related materials within the Bureau of Prisons' system of records or part of the record of this case, to the appropriate United States Probation Office for the purpose of coordinating psychological, psychiatric and other mental health treatment pursuant to the terms of his supervised release.

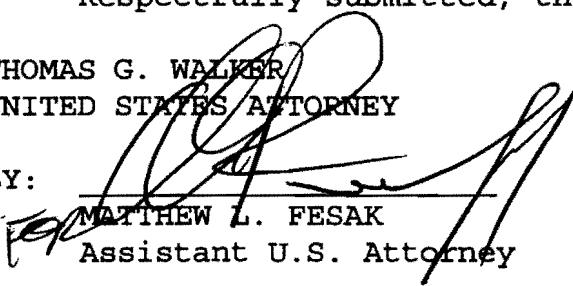
5. Petitioner agrees and promises that, in consideration of Respondent's admissions and stipulations set out in Paragraphs 2 through 3 above and Respondent's agreements and promises in Paragraph 4 above, the United States will file a motion under Federal Rule of Civil Procedure 41, asking the Court to dismiss this action with prejudice. However, neither the terms of this settlement agreement nor the voluntary dismissal with prejudice shall preclude or estop the United States from re-certifying Respondent as a sexually dangerous person should he be returned to

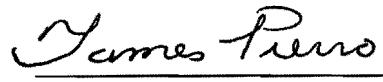
the custody of the Bureau of Prisons or the Attorney General at a later date due to a revocation of his supervised release or a new criminal conviction.

6. Petitioner and Respondent jointly request that the Court conduct a hearing to inquire of counsel for the United States, Respondent, and Respondent's counsel whether each of them personally affirms in open court that the terms and conditions of this settlement agreement have been entered and undertaken knowingly and voluntarily after having had adequate opportunity to seek counsel.

Respectfully submitted, this the 16th day of ^{October} September, 2012.

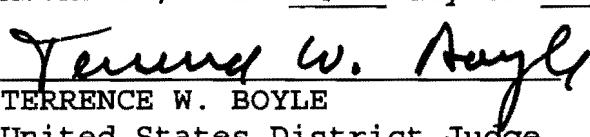
THOMAS G. WALKER
UNITED STATES ATTORNEY

BY: 
MATTHEW L. FESAK
Assistant U.S. Attorney


James Pierro
JAMES PIERRO
Respondent


JOSEPH CRAVEN
Attorney for Respondent

APPROVED, this 25 day of October, 2012.


TERRENCE W. BOYLE
United States District Judge